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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/810,939	03/16/2001	Mary Capelli-Schellpfeffer	3066.1000-001	7242

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EXAMINER

GHALI, ISIS A D

ART UNIT	PAPER NUMBER
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1615

DATE MAILED: 01/14/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

09/810,939

Applicant(s)

CAPELLI-SCHELLPFEFFER,  
MARY

Examiner

Isis Ghali

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-11, 14, 16-37, 40-51, 57-61, 67-74, 77 and 78 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-11, 14, 16-37, 40-51, 57-61, 67-74, 77 and 78 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

## Priority under 35 U.S.C. §§ 119 and 120

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All b) ☐ Some \* c) ☐ None of:  
1. ☐ Certified copies of the priority documents have been received.  
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.  
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).  
\* See the attached detailed Office action for a list of the certified copies not received.
- 13) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application) since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.  
a) ☐ The translation of the foreign language provisional application has been received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121 since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.

## Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 11.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: .

### **DETAILED ACTION**

The receipt is acknowledged of applicant's request for extension of time, amendment A, and IDS, all filed 06/24/2003.

Claims 12, 13, 15, 38, 39, 62-66, 75, 76, and 79 have been cancelled.

**Claims 1-11, 14, 16-37, 40-51, 57-61, 67-74, 77 and 78 are included in the prosecution and the status of the claims as follows:**

1. Claims 1-4, 8, 11, 27-30, 34, 37 and 67-68 are rejected under 35 U.S.C. 102(b) as being anticipated by Sibley et al. (DE 27 07 537; hereafter '537).
2. Claims 1-4, 7-8, 10-11, 27-30, 33-34, 36-37, and 67-68 are rejected under 35 U.S.C. 103(a) as being unpatentable over Sibley et al. (DE '537).
3. Claims 1-8, 10-14, 16-22, 25-34, 36-47, 50-51, 57-61, 67-74 and 77-78 are rejected under 35 U.S.C. 103(a) as being unpatentable over Sibley et al. (DE '537) in view of Lee (5,552,162; hereafter '162).

4. Claims 23-24 and 48-49 are rejected under 35 U.S.C. 103(a) as being unpatentable over Sibley et al. (DE '537) in view of Lee et al ('162) and further in view of Allen (4,895,727; hereafter '727).

5. Claim 9 is rejected under 35 U.S.C. 103(a) as being unpatentable over Sibley et al. (DE '537) in view of Boghosian et al. (4,244,948; hereafter '948).

The rejections are discussed in details in the previous office action and are maintained for reasons of record.

### ***Response to Arguments***

6. Applicant's arguments filed 06/24/2003 have been fully considered but they are not persuasive.

The main gist of applicant's argument against the rejection of the claims over DE '537 is that the DE '537 does not teach "keloids". Applicants also argue that each of US '162 , US '727 and US '948 do not teach the improvement of the size and appearance of healed wound.

In response to applicant's argument that the references fail to show certain features of applicant's invention, it is noted that the features upon which applicant relies (i.e., improving the size and appearance of "keloids") are not recited in the rejected claim(s). The present claims are directed to method of improving the appearance of healed wound, and this is not necessary a keloid. Although the claims are interpreted in

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light of the specification, limitations from the specification are not read into the claims.

See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993). DE '537

disclosed treatment of disorders associated with hyperplasia, i.e. abnormal

multiplication of the cells , and that reads on the scar caused by healed wound, if any.

US '162 is relied upon for teaching the thermal insulating material combined with medicaments to reduce the size of the scar, as desired by applicants. US '727 is relied upon for teaching the deodorant in a composition comprising salicylic acid. It is *prima facie* obvious to combine two compositions each of which is taught by the prior art to be useful for the same purpose. See *In Sinclair & Carroll Co. v. Interchemical Corp.*, 325 U.S. 327, 65 USPQ 297 (1945).

US '948 is relied upon for teaching the use of the readily absorbed form of the salicylic acid that is used by applicants and recognized by the prior art to easily penetrate the tissues.

It is well established that the claims are given the broadest interpretation during examination. A conclusion of obviousness under 35 U.S.C. 103 (a) does not require absolute predictability, only a reasonable expectation of success; and references are evaluated by what they suggest to one versed in the art, rather than by their specific disclosure. *In re Bozek*, 163 USPQ 545 (CCPA 1969). In the light of the foregoing discussion, the Examiner's ultimate legal conclusion is that the subject matter defined by the claims would have been obvious within the meaning of 35 U.S.C. 103(a).

***Conclusion***

7. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.


8. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Isis Ghali whose telephone number is (703) 305-4048. The examiner can normally be reached on Monday through Thursday from 7:00 AM to 5:30 PM, Eastern Time.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Thurman K. Page, can be reached on (703) 308-2927. The fax phone number for the organization where this application or proceeding is assigned is (703) 305-3592.

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Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-1235.

Isis Ghali  
Examiner  
Art Unit 1615

  
THURMAN K. PAGE  
SUPERVISORY PATENT EXAMINER  
TECHNOLOGY CENTER 1600